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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,871	12/30/2003	Teresa M. Zander	659-2080	6330
757	7590	08/10/2006	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			GIBSON, KESHIA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,871	<b>Applicant(s)</b> ZANDER ET AL.	
	<b>Examiner</b> Keshia Gibson	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-18 and 20-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 5/15/06 have been fully considered but they are not persuasive. Applicant has argued:

- a. Molina discloses a wrapper but does not disclose that the wrapper forms a "peel strip." However, Swanson teaches a wrapper that forms a peel strip; Swanson has been incorporated by reference by Molina, as presented in the previous Office Action. Therefor, Molina is considered to disclose a wrapper that forms a peel strip.
- b. Batra teaches first and second indicia but does not disclose or suggest that both of the first and second indicia are applied to each of the product and packaging. However, the "indicia" of Batra may comprise a latticework and decorative markings, each of which may be considered a first or a second indicia, and are both applied to each of the product and packaging.
- c. One of ordinary skill in the art would not have been motivated to combine Molina and Batra when the two are considered in their entirety—based on teachings of using identical or non-identical indicia. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981). Additionally, it is pointed out that although Batra discloses that overall indicia are different but matched, Batra does disclose the indicia comprise the same first and second visual patterns (i.e., one- a latticework and two- a decorative marking).

d. Molina teaches away from having two indicia on the same product and also on a packaging component. Applicant goes on to state that Molina discloses that a kit might have different signal colors, the individual products within the kit never would; however, Examiner could find no such statement as referenced by Applicant. Even if such teaching is present, Molina explicitly discloses that the color of the packaging, wrapper, and article may be the same color (column 4, lines 43-51 and column 5, lines 1-8). It is well settled that the reference is not limited to the preferred embodiments. *Merc & Co v. Biocraft Labs, Inc.*, 874 F.2d 804, 807 10 USPQ 2d 1843, 1846 (Fed. Cir. ). It is well settled that an applied reference may be *relied upon for all that it would have reasonably suggested to one of the ordinary skill in the art, including not only preferred embodiments, but less preferred and even nonpreferred*. Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become patentable. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert.

denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998).

Additionally, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In view of Batra, Molina is considered to disclose two indicia on the same product and on a packaging component, as presented in the previous Office Action.

e. The rejection of claim 14 is not understood and that if Examiner wants to maintain this rejection, a new, non-final Office Action explaining the rejection is requested. However, such request is denied because Applicant has amended Claim 14 to introduce new limitations, thus necessitating new grounds of rejection. Additionally, the withdrawal of any rejection of Claim 14 over Molina in view of Batra would not overcome the previous rejection of Claim 14 under Briseboi in view of Batra—whether amended or not. As such, the rejection is made final and considered proper.

f. Neither Molina nor Batra disclose a packaging component having a wrapper element having a first and second visual characteristic and a fastening element having a second visual characteristic. In response to applicant's arguments against the references individually, one cannot show nonobviousness

by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

g. Essentially, the fastening element (tear-away strip) is not applied to a packaging component that is "sized and configured to hold a single, individual product component" but instead to a packaging component that holds a plurality of pouches. However, the packaging component holds at least one single, individual component; the claim language does not exclude that presence of other single, individual components, as essentially stated in previous Office Action.

h. As shown in the embodiment of Figure 7, Briseboi discloses that both indicia are on the reminder tag, not on the wrapper. However, at least packaging (receptacle 102) and fastening element (reminder tag/tear-away strip may comprise indicia, as previously presented. Also see [0017].

i. There is no suggestion to combine Briseboi and Batra and further that Briseboi teaches against putting first and second indicia on the product. However, silence of a teaching does not constitute teaching away. In the exert cited by Applicant, Briseboi is discussing the problems associated with a lack of indicia being provided on the product packaging, not disparaging against the application of indicia on a product. Briseboi and Batra address the same problem

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solving area and, as such, one of ordinary skill in the art would have been motivated to combine them—as further presented in the previous Office Action.

j. In regards to Claims 16-17 and 23, the newly presented limitations are not met by the prior art. These newly presented limitations have been addressed in the new grounds of rejection below.

k. Molina, as acknowledged by the Examiner, does not disclose that the indicator comprises a first and second visual characteristic. However, as previously presented, Batra does. Again, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

2. Thus, despite applicant's arguments, Briseboi et al., Molina et al., and Batra, alone or in combination, are still considered to anticipate and/or render obvious the structural limitations set forth in Claims 1, 3-18, and 20-24 of the claimed invention, as presented in the previous Office Action (which has been modified and presented again, in view of applicant's amendments, below).

### ***Claim Objections***

3. Claim 16 is objected to because of the following informalities: the recitation “non-woven, spunbond material” is considered redundant, since a spunbond material is inherently non-woven. Appropriate correction is required.

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4. Claim 17 is objected to because of the following informalities: it is suggested that the reference to the packaging component material be the same as that of Claim 16 for congruency and to avoid antecedent basis issues. Appropriate correction is required.

5. Claim 18 is objected to because of the following informalities: it is noted the that recitation "a second packaging component having said at least said first and second visual characteristics," was present in the original claim but is no longer present in the currently amended claim. Examiner has held this to be a typo and rejected the claim on such basis, otherwise, the last line of the currently amended claim is considered to lack proper antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Briseboi et al. (US 2002/0148749).

In regard to Claim 22, Briseboi discloses a visually coordinated product comprising a product 206 having a body side liner, outer cover, and absorbent core and disposed within a first packaging component 310; the first packaging component disposed in a second packaging component 102 and comprising a wrapper element having a first (and second) characteristic 106, 108, etc. and a fastening element (reminder tag)



releasably securing the wrapper element in a closed configuration; the second packaging component having the first and second visual characteristics ([0038], [0016]-[0018], [0045]-[0053]).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 14, 18, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330).

In regard to Claim 14, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose

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packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. The package holds a single product component and a plurality of components (Briseboi, [0033]). It is further noted that the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components. The packaging component and a fastening element (reminder tag or tear-away strip) may comprise the first and second characteristics (Figs., [0016]-[0018], [0045]-[0053]).

In regard to Claims 18, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly

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disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging.

In regard to Claim 20, Briseboi et al. disclose the claimed invention but do not expressly disclose that at least one of the first and second visual characteristics comprises a color. However, it would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise colors since colors and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

In regard to Claim 21, the visual characteristics comprise a pattern (Figures).

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11. Claim 16-17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briseboi et al. in view of Batra (US 6,520,330) in further view of Kudo (US 6,802,833).

In regard to Claim 16, Briseboi et al. disclose a product 206 having a body side liner, outer cover, and absorbent core and a first packaging component 310 and a second packaging component 102, which both packaging components comprise first 106 and second 108 visual characteristics (whole document). Briseboi et al. do not expressly disclose that the product 206 comprises a first and second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Thus, it would have been obvious to one of ordinary skill in the art to modify the product of Briseboi et al. to have a first and second characteristic, as taught by Batra, since doing so would allow for a common theme of indicia between the product and its packaging. Briseboi et al. In view of Batra disclose that the packaging component may be made from any suitable material (Briseboi [0032]) but do not expressly disclose that the packaging component comprises a nonwoven, spunbond material. Kudo et al. disclose packaging for a sanitary product and further disclose that

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the packaging may comprise a spunbond material (column 7, lines 20-26, column 12, lines 15-39). Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging component of Briseboi in view of Batra to comprise a spunbond material, as taught by Kudo, since Briseboi in view of Batra disclose that the packaging component may be made from any suitable material and Kudo disclose spunbond materials as suitable for packaging sanitary products. Additionally, it would have been obvious to one of ordinary skill in the art to select a spunbond material for the packaging component material, since spunbond materials are known for use in sanitary product packaging, as support by Kudo, and it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

In regard to Claims 17 and 23, Briseboi et al. in view of Batra et al. in further view of Kudo disclose that the package may comprise a spunbond material. Briseboi et al. in view of Batra et al. in further view of Kudo further disclose that the packaging component may comprise a see-through material (Kudo, column 16, line 51-column 17, line 8) but do not expressly disclose that the nonwoven has a specific basis weight. However, Briseboi et al. in view of Batra et al. in further view of Kudo do disclose that the basis weight of a paper material affects intensive properties that are visible to the consumer (Batra, column 5, lines 3-24) and that the basis weight should be small so that the product within the packaging component may be easily confirmed visually (Kudo, column 17, lines 1-8). As such, Briseboi et al. in view of Batra et al. in further view of Kudo are considered to disclose the basis weight of the nonwoven material is to

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be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the packaging component material with a specific basis weight, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. (US 6,601,705) in view of Batra and in further view of Briseboi. et al.

In regard to Claim 14, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any indicator may be used to indicate the article's performance characteristics. Thus, it would have been obvious to

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one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any visual indicator may be used to indicate the article's performance characteristics. Molina et al. in view of Batra disclose that the packaging components may have a first and second visual characteristic but do not expressly disclose that packaging component (either first or second) comprises a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration. Briseboi et al. disclose a packaging system comprising first and second packaging components and further disclose that the components may comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration; this provides for a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product (Figs., [0038], [0016]-[0018], [0045]-[0053]). One of ordinary skill in the art would have been motivated to modify the packaging components of Molina et al. in view of Batra to comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration, as taught by Briseboi et al., since doing so would provide a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product. Thus, it would have been obvious to one of ordinary skill in the art to modify the

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packaging components of Molina et al. in view of Batra to comprise a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration, as taught by Briseboi et al., since doing so would provide a reminder tag that can assist the user easily identifying the product the user normally purchases, without having to remember specific details associated with the product.

13. Claims 16-17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra as applied to claim 14 above, and further in view of Kudo (US 6,802,833).

In regard to Claim 16-17 and 23, see previous discussion of these claims over Briseboi et al. in view of Batra (US 6,520,330) in further view of Kudo (US 6,802,833).

14. Claims 1-13, 15, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molina et al. in view of Batra and further in view of Farris et al. (WO 02/30347).

In regard to Claims 1 and 19, Molina et al. disclose a packaging system comprising a product (article) having a body side liner, outer cover, and absorbent core, and further comprising a first packaging component (wrapper) and a second packaging component (container), which may all comprise a visual indicator/characteristic (signal color/indicator). Molina et al. disclose that the indicator may be any color, shape, size or the like (column 4, lines 52-67) but do not expressly disclose that the indicator



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comprises a first and a second characteristic. Batra disclose packaging system for disposable consumer products comprising a product and at least one outer packaging; Batra further teach providing the product and packaging with a indicator comprising first and second characteristics (indicia) to promote a common theme between the product and its packaging (whole document, especially abstract; column 1, lines 1-67; column 4, line 53-column 6, line 4; column 8, lines 51-63). One would have been motivated to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any indicator may be used to indicate the article's performance characteristics. Thus, it would have been obvious to one of ordinary skill in the art to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since doing Molina discloses that any visual Indicator may be used to indicate the article's performance characteristics. Molina et al. in view of Batra disclose that article comprises peel strip (wrapper) removeably connected to the garment side outer cover (Swanson et al. (US 4,55,146), Figures, column 5, line 18-column 6, line 23, which is incorporated by reference by Molina et al. in column 5, lines 23-42). Molina et al. further disclose that the product may comprise the visual indicator (first and second visual characteristics) (Molina column 3, line 29; column 5, lines 1-8; incorporated) and that the peel strip (wrapper) may comprise the visual indicator (first and second visual characteristics), but do not expressly disclose that the outer cover comprises the visual indicator. Farris et al. disclose a packaging system for a product having a body side liner, absorbent core, and an outer cover and a packaging component, wherein the product and packaging

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components comprise visual indicators (whole document). Farris et al. further disclose that the visual indicator may be placed anywhere on the product, which would include the outer cover. One of ordinary skill in the art would have been motivated to modify Molina et al. in view of Batra to provide at least a portion of the outer cover with a first visual characteristic, as taught by Farris et al., since Molina et al. in view of Batra disclose that the product may be provided with a visual indicator but do not expressly disclose where and Farris et al. teach that a visual indicator on a product having a visual indicator associated with its packaging may be provided with anywhere on the product. Thus, it would have been obvious to one of ordinary skill in the art to modify Molina et al. in view of Batra to provide at least a portion of the outer cover with a first visual characteristic, as taught by Farris et al., since Molina et al. in view of Batra disclose that the product may be provided with a visual indicator but do not expressly disclose where. In regard to Claims 3-4, Molina et al. do not expressly disclose that the product comprises a substrate between the body side liner and absorbent core; however, it would have been obvious to one of ordinary skill in the art to provide the product with a surge layer, or substrate, since it was known in the art to provide disposable absorbent articles with surge layers, as supported by Mosley et al. (US 5,752,945, column 1, lines 10-23) and DiPalma (US 6,264,776, column 11, lines 51-67). Molina et al. also do not expressly disclose that the surge layer comprises as discussed for Claim 2, Molina does not expressly disclose that the surge layer comprises one of the first and second characteristics. However, as discussed for Claim 2, Molina discloses that the product may be colored and Farris et al. disclose that any part of the product may comprise the

visual indicators. Thus, it would have been obvious to one of ordinary skill in the art to modify Molina et al. in view of Batra to provide the surge layer with a first visual characteristic, as taught by Farris et al., since Molina et al. in view of Batra disclose that the product may be provided with a visual indicator but do not expressly disclose where.

In regard to Claim 5, the first and second visual characteristic may comprise colors (Molina et al., whole document; also see Batra, column 6, lines 41-56).

In regard to Claim 6, the first color may be white and the second may be selected from the group consisted of the colors claimed, including black, green, and red (column 4, lines 30-50).

In regard to Claims 7-10, Molina et al. disclose that the colors may vary in hue and imply that the colors may differ in value (luminosity) and saturation (column 3, lines 12-24; column 4, lines 30-50) but do not expressly disclose that the characteristics have specific values in hue, value, or saturation. However, Molina et al. have disclosed these may be varied to project the desired visual indication to a consumer. As such, hue, value, and saturation are considered result effective variables. Thus, it would have been obvious to one of ordinary skill in the art to vary the hues, values, and saturations of the colors of the various components of Molina et al., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claims 11 and 12, the visual characteristics may be embossments or patterns (Batra, column 8, lines 22-49). Furthermore, as discussed for Claim 1, Molina et al. disclose that the indicator may be any color, shape, size or the like. It would have

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been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise an embossment or a pattern since colors, embossments, and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art.

In regard to Claims 13 and 15, the package holds a single product component and a plurality of components (Molina, Figures, column 2, line 48-column 3, line 40). It is further noted that the language “packaging component is sized and configured to hold a single, individual product component” only requires that the package be capable of doing such and that “a single, individual product component” may still exist among a plurality of product components.

In regard to Claim 19, see discussion for C1.

In regard to Claim 20, see discussion for Claim 5.

In regard to Claim 21, see discussion for C12.

In regard to Claim 24, the colors may be non-white and non-black (Molina, column 4, lines 38-41).

***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner  
Art Unit 3761

klg 7/25/06

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

